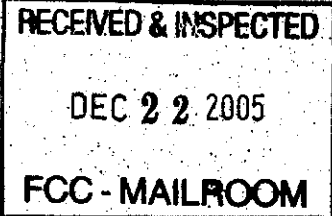




CGB-CC-0064



9000 E. Chaparral Road, Scottsdale Arizona 85256

December 20, 2005

Federal Communications Commission  
Attn: CGB Room 3-B431  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Closed Captioning Exemption for MCTV (Maricopa Community Colleges Television)

This letter serves as an official request and petition for exemption of the FCC's mandate delineated in the Telecommunications Act of 1996, Section 79.1 regarding closed captioning of video programming.

Background:

Maricopa Community Colleges Television (MCTV), Channel 115, was created through an agreement with Cox Communications (see attached agreement) to serve and provide 24-hour educational and informational television programming to digital tier cable subscribers in the greater Phoenix area. MCTV is a support element and function of the Maricopa County Community Colleges District (MCCCD). All MCTV originally produced programming focuses on the educational activities and academic programs conducted on MCCCD campuses. MCTV operates with an allotted annual operating budget. MCTV's mission priorities do not include the pursuit of external revenue. Moreover, as a priority, MCTV pursues and promotes higher education learning opportunities for Maricopa students through internships, credit non-credit activities and work study to a diverse population.

Let it be known that MCTV (Maricopa Community Colleges Television, Channel 115, Cox Communications), located at Scottsdale Community College, Scottsdale, Arizona is in the process of obtaining the necessary resources which will allow for the compliance of the closed captioning

requirement, but seeks temporary or partial exemption based upon the following factors:

Operating budget (undue financial burden):

MCTV has an annual operating budget under \$850,000. Based upon one of the closed captioning exemptions prescribed by the FCC; programming provided by program providers with annual gross revenue under \$3 million, MCTV qualifies to be considered as exempt of closed captioning.

Trained closed captioning personnel:

Currently, MCTV does not possess the required skilled personnel necessary to facilitate the delivery of closed captioning. Additionally, the availability of trained closed captioning personnel is limited in the Phoenix area at this time. However, MCTV is working closely with one of the MCCCDC colleges developing a new course for this spring where students will be able to gain training in court reporting and closed captioning. It is our intention to develop an internship program with the school which will provide students the opportunity to practice closed captioning thus gaining valuable experience.

\*Programming on New Networks:

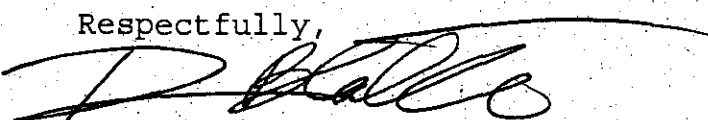
As outlined in the agreement between COXCOM, INC. d/b/a COX COMMUNICATIONS PHOENIX and Maricopa County Community College District (MCCCDC), MCTV is defined as a newly functioning programming entity as of July 30, 2002. Therefore, MCTV qualifies for exemption consideration based upon the fact that MCTV is still operating in the prescribed four-year window. (Refer to attached legal document)

Educational television:

As part of its mission MCTV delivers programming that is locally produced for the use of K-12 and post secondary schools. See attached agreement under Terms and Conditions, Number 2, a, b, c, d and f.

Thank you for your diligent consideration as you review this exemption request.

Respectfully,



Rene Blatte  
Director, MCTV

# COPY

OFFICE OF GENERAL COUNSEL  
RECEIVED

## AGREEMENT

JUL 3 0 2002

This AGREEMENT ("Agreement") is entered into, as of the date of the complete execution of this Agreement, by and between COXCOM, INC. d/b/a Cox Communications Phoenix ("Cox Communications"), a Delaware corporation with its principal place of business at 1550 West Deer Valley Road, Phoenix, Arizona 85027, and MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT ("MCCCD"), a political subdivision of the State of Arizona with its principal place of business at 2411 West 14<sup>th</sup> Street, Tempe, Arizona 85281.

### Preamble

Cox Communications is a cable operator in the Greater Phoenix area providing, among other things, video and high-speed data services to subscribers. MCCCD consists of ten nationally accredited colleges, two skill centers and multiple satellite education centers in the Greater Phoenix area. Cox Communications and MCCCD are interested in working together to create a digital, educational television channel that will be available in the Greater Phoenix area and will be known as Maricopa Community College Television, or MCTV.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, agree as follows:

### Terms and Conditions

1. Description of MCTV. MCTV will be a digital, educational cable television channel, branded with the MCTV and MCCCD logos, that will be available through Cox Communications to those portions of the Greater Phoenix market where Cox Communications provides digital television service (the "DTV Territory"). Cox Communications may also display its logo on the channel in a form and manner to be mutually agreed upon between the parties. The DTV Territory will expand over time as Cox Communications provides digital television service to more areas within the Greater Phoenix market. MCTV will be distributed originally only via digital cable, but the parties will consider the possibility for future expanded delivery via other means, including, without limitation, via the Internet. MCTV will be commercial-free; advertising by any commercial entity will be prohibited. The parties understand and agree that, notwithstanding the foregoing sentence, MCTV may include underwriting statements by underwriters of some of the programs.
2. Programming on MCTV. MCTV will include all kinds of educational programming, including, without limitation, coursework, entertainment, training programs and public information, but excluding any pay-per-view programming or other programming that would require additional payment to Cox by subscribers. MCCCD will be the sole creator and producer of MCTV programming, or will be solely responsible for selecting appropriate programming from other sources. Cox Communications will not have any ongoing physical presence in the building or production facilities that MCCCD uses in conjunction with MCTV ("Facility"), nor will it exercise any authority over MCTV program content other

than that which may be required, if any, under applicable telecommunications laws and regulations. MCTV programming will be dedicated to fulfilling the following goals:

- a) Offering and promoting new higher education learning opportunities for a diverse student population;
- b) Expanding the learning partnerships with public, private and home K-12 systems;
- c) Encouraging new student enrollment in traditional and distance education;
- d) Training a diverse population of students and staff on a professional level through production programming and station management;
- e) Providing entertaining, informative and educational programming for the general public to promote life-long learning;
- f) Building a cooperative educational environment between all MCCCCD colleges and centers by sharing in programming, service delivery and the resulting benefits;
- g) Providing a platform for MCCCCD to project its learning philosophies and practices to the local service area and beyond; and
- h) Delivering multi-cultural programming that celebrates diversity in the community.

MCCCCD will own all right, title and interest (including copyright rights) in and to the MCTV programming or will be solely responsible for obtaining all legal rights necessary to telecast on MCTV programming owned by others.

3. Responsibilities of MCCCCD. MCCCCD will have the following responsibilities:

- a) MCCCCD will be responsible for the programming on MCTV. This will include having final editorial control of the content, and being responsible for the scheduling of programming.
- b) MCCCCD will be responsible for the Facility. The Facility is currently located at the Scottsdale Community College.
- c) MCCCCD will be responsible for making the MCTV programming available, regardless where it is produced, to Cox Communications at the Facility.

4. Responsibilities of Cox Communications. Cox Communications will have the following responsibilities:

- a) With the assistance and cooperation of MCCCCD, Cox Communications will be responsible for establishing and maintaining a fiber connection from its network to the Facility, and for digitally compressing the MCTV signal Cox Communications receives from the Facility.
- b) Cox Communications will be responsible for distributing MCTV over its network in a digital format in a manner similar to how it distributes other digital channels, and for continuing to build, rebuild and maintain its cable television network in the DTV Territory for the delivery of MCTV.

- c) Cox Communications will advise MCCCCD in connection with the programming on MCTV and with the Facility, but will not have any actual control over the programming or any presence at the facilities.
5. MCTV Launch. The parties will use best efforts to launch MCTV by January 1, 2001. By June 1, 2001, MCTV will provide at least twelve (12) hours of programming per day, five (5) days per week.
6. Distribution of MCTV. MCTV will be available, at no additional cost, to all Cox Communications subscribers who subscribe to any of Cox Communications' digital tiers. Cox Communications will retain all revenue received from subscribers for receipt of television services that are part of a digital tier (including MCTV).
7. Ownership; Licensing. The parties shall work together to design a distinct MCTV identity and logos (collectively, "MCTV Marks"), and to market and promote MCTV. Cox makes no claim of right, title or interest in or to the MCTV Marks. MCCCCD hereby grants to Cox Communications a non-exclusive, worldwide license to use the MCTV Marks solely in performing Cox Communications' obligations pursuant to this Agreement, including, without limitation, in marketing and promoting MCTV. Cox Communications shall not use the MCTV Marks except for the benefit of MCTV. Upon request by MCCCCD, Cox Communications shall provide MCCCCD with samples of use of the MCTV Marks by Cox Communications.
8. Allocation of Costs. Each party will be responsible for its own costs incurred in connection with performing its obligations pursuant to this Agreement.
9. Extension of Cable Service to all MCCCCD Campuses and Centers. Upon MCCCCD's request, Cox Communications will explore the possibility of extending cable television service, on a cost basis, to all MCCCCD campuses and centers. In addition, Cox Communications will work with MCCCCD to utilize, by preempting premium channels in the MCCCCD campus areas, up to five (5) additional channels for distribution of MCCCCD programming of the type described in Section 2 above to the campuses.
10. Term. The term of this Agreement shall commence upon execution and shall continue in effect, unless terminated earlier pursuant to its terms, for one year. . The Agreement shall be automatically renewed unless a party provides notice of termination to the other party pursuant to Paragraph 13.d.
11. Representations and Warranties/Indemnification. MCCCCD represents and warrants that the content of MCTV (and any other MCCCCD programming added pursuant to Section 9) and the MCTV Marks shall not violate any laws or infringe any rights of any third parties, including, without limitation, copyright, trademark, service mark, right of publicity, right of privacy, libel or slander. MCCCCD hereby agrees to indemnify, defend and hold harmless Cox Communications, its parent, subsidiary and affiliated companies, the officers, directors, employees and agents of any of these, from and against any and all losses, claims, damages, costs and expenses (including reasonable attorneys' fees) arising from or in connection with

the content of MCTV and any other MCCCCD programming. Cox Communications agrees to provide prompt written notice to MCCCCD of any such claim.

12. Limited Distribution Protection. MCCCCD agrees that, within six months of the last broadcast of an MCCCCD-owned program telecast on MCTV's digital channel or channels (not including the campus channels pursuant to Section 9), it will not show that program through non-Cox Communications' television channels in the Greater Phoenix market. Any other program produced in MCTV's facilities but not telecast through Cox Communications' digital channels (other than the campus channels pursuant to Section 9) under this Agreement is not subject to the foregoing restriction, and MCTV may broadcast the program in a manner solely within its discretion.

13. Termination. This Agreement may be terminated prior to its expiration as follows:

- a) MCCCCD may terminate this Agreement under Arizona Revised Statutes §38-511 (Cancellation for conflict of interest) for a violation of that statute.
- b) MCCCCD may terminate this Agreement, without penalty, if its Governing Board fails to appropriate funds in subsequent fiscal years to support MCTV. MCCCCD shall provide Cox Communications prompt written notice as soon as it learns that funding will not be available.
- c) Either party may terminate this Agreement upon twenty (20) days written notice to the other party if the other party is in material breach of this Agreement and such breach is not cured within sixty (60) days after receipt of written notice of such breach from the non-breaching party. Except for the indemnification obligation set forth in Section 11, termination of this Agreement shall be the only remedy for such breach.
- d) Either party may terminate this Agreement, without penalty, by providing the other party six (6) months prior written notice.
- e) Either party may terminate this Agreement immediately if the other party files for bankruptcy or receivership, or takes any actions relating to insolvency, such as an assignment for the benefit of creditors.

14. Communications. The parties recognize the value and importance of clear, accurate and consistent public communications regarding this Agreement. Accordingly, the parties will agree on the timing and content of any public announcement regarding MCTV.

15. Nondiscrimination. Neither party shall discriminate illegally in either the provision of services, or in employment, against any person because of sex, race, disability, national origin, veteran's status, sexual preference or religion. Each party agrees to comply with all applicable federal and state laws, rules, regulations, and executive orders relating to non-discrimination, affirmative action and equal employment opportunity.

16. Force Majeure. Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake,

flood, substantial snowstorm, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any similar cause beyond that party's control.

17. Governing Law. This Agreement and all matters or issues related thereto shall be governed by the laws of the State of Arizona without regard to its choice of law rules.
18. Assignment. Neither party shall assign or transfer any of its rights or obligations under this Agreement without the consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Cox Communications can assign the Agreement to a parent, subsidiary or affiliated company without MCCCCD's prior written consent. In the event of any assignment or transfer, the approved assignee shall agree to accept and abide by all of the terms and conditions of this Agreement.
19. Relationship of Parties. Neither this Agreement nor the cooperation of the parties contemplated herein shall be deemed or construed to create any partnership, joint venture or agency relationship between MCCCCD and Cox Communications. Neither party is, nor shall either party hold itself out to be, vested with any power or right to bind the other party contractually or act on behalf of the other party as a broker, agent or otherwise.
20. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall be in full force and effect.
21. Waiver. No term or condition of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or excuse is in writing and is executed by the party against whom such waiver or excuse is claimed.
22. Notices. All notices and demands of any kind or nature which either party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing and may be served personally; by prepaid registered or certified United States mail; by private mail service (such as Federal Express or UPS); or by facsimile (and confirmed via telephone), provided a copy is also sent via first class mail, postage prepaid; addressed to:

For MCCCCD:

*Rene Blatte, MCTV, Director (Arrived on location Aug 9, 2001)*  
~~Dr. Steve Meredith MCTV~~  
Scottsdale Community College  
9000 E. Chapparral Road  
Scottsdale, Arizona 85256-2626  
Telephone: (480) 423-6466 480-423-6354  
Fax: (480) 423-6396

With a copy to:

Margaret E. McConnell  
Assistant General Counsel  
MCCCCD Legal Department  
2411 West 14<sup>th</sup> Street  
Tempe, Arizona 85281  
Telephone: (480) 731-8888  
Fax: (480) 731-8890

For Cox Communications:

Mr. Ivan Johnson  
Cox Communications Phoenix  
1550 West Deer Valley Road  
Phoenix, Arizona 85027  
Telephone: (623) 322-8004  
Fax: (623) 322-7424

With a copy to:

James A. Hatcher, Esq.  
Vice President and General Counsel  
Cox Communications, Inc.  
1400 Lake Hearn Drive, N.E.  
Atlanta, Georgia 30319  
Telephone: (404) 843-5834  
Fax: (404) 843-5845

Either party may from time to time, designate, in a writing referencing this Section, a different mailing address or a different person to which all further notices or demands are thereafter to be addressed. Notice shall be deemed given upon receipt.

23. Headings. The titles and headings of the various sections and paragraphs hereof are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction on any of the provisions of this Agreement.
24. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties with regard to the subject matter hereof, and supersedes all prior and contemporaneous oral or written agreements and representations. Any amendment of this Agreement shall be in writing and signed by both parties.
25. Survival. The obligations of the parties under this Agreement that by their nature would continue beyond expiration, termination or cancellation of this Agreement (including, without limitation, Sections 11, 12 and 25) shall survive any such expiration, termination or cancellation.



26. Authority. Each party represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations pursuant to this Agreement without violating any law or breaching any obligation to which that party is bound. Each party further represents and warrants that the person signing this Agreement on its behalf is authorized to do so.

COXCOM, INC. d/b/a COX  
COMMUNICATIONS PHOENIX

MARICOPA COUNTY COMMUNITY  
COLLEGE DISTRICT

By: Ivan D. Johnson

Name: Ivan D. Johnson

Title: V.P., Cmnty Relations/TeleVideo

Date: 7/30/02

By: Margaret E. McConnell

Name: MARGARET E. McCONNELL

Title: ASSISTANT GENERAL COUNSEL

Date: 7-30-02